



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
••	:	Examiner: A. E. Dudding
Mitsuru HIURA)	
	:	Group Art Unit: 2853
Application No.: 09/915,325)	
	:	Confirmation No.: 5938
Filed: July 27, 2001)	
	:	
For: EXPOSURE APPARATUS AND DEVICE)	
MANUFACTURING METHOD USING THE	:	
SAME)	
Y C D	:	
U.S. Patent No: 6,891,175)	
T 1. M 10. 2005	:	Tumo 22, 2005
Issued: May 10, 2005	,	June 23, 2005

Office of Patent and Legal Administration

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)

Sir:

Patentee hereby requests the Commissioner under 37 C.F.R. §1.705(d) for reconsideration and recalculation of the Patent Term Adjustment (PTA) for the above-identified Patent. The Commissioner is hereby authorized to charge all fees associated with this request to Deposit Account No. 06-1205.

For at least the following reasons, this Patent is believed to be entitled to a PTA of 421 days.

FACTS

- (1) The subject Patent issued from Application No. 09/915,325, filed July 27, 2001.
 - (2) The subject Patent is not subject to any terminal disclaimers.
- (3) The Patent Application Information Retrieval (PAIR) system of the U.S. Patent and Trademark Office (PTO) indicates Applicant-Delay periods of 122 days. The PAIR system also indicates a PTO-Delay period of 423 days. The PTA assessed for the subject Patent is 301 days. The Applicant-Delay period of 120 days is disputed, for the reasons provided below.
- (4) On March 12, 2004, a Notice of Allowance and Fee(s) Due (Notice) was issued. Attached to the Notice was a Determination of Patent Term Adjustment Under 37 U.S.C. §154(b) providing a patent term adjustment of 215 days.
- (5) On March 31, 2004, Applicant filed a paper entitled Request for Corrected Notice of Allowability.
- (6) The PAIR indicates a "Miscellaneous Incoming Letter" on March 31, 2004, and assessed an Applicant delay period of 120 days.
- (7) On June 10, 2004, Applicant filed a paper entitled Submission of Previously-Filed Paper, with the Request for Corrected Notice of Allowability as an attachment.
 - (8) On June 14, 2004, Applicant timely paid the Issue Fee (via hand-carry).
- (9) The subject patent issued on May 10, 2005, with a patent term extension of 301 days.

ARGUMENTS

- (10) The PTO incorrectly treated the Request for Corrected Notice of Allowability as an "other" paper under 37 CFR §1.704(c)(10) and wrongly assessed an Applicant delay period of 120 days.
- (11) 37 C.F.R. §1.704(a) provides that "[t]he period of adjustment of the term of a patent under §1.703(a) through (e) shall be reduced by a period equal to the period of time during which the Applicant failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application."
- (12) It is submitted that the miscellaneous incoming letter recorded in the PAIR system on March 31, 2004, should not be considered a failure to engage in reasonable efforts to conclude prosecution, for the following reasons.
- (13) The Request for Corrected Notice of Allowability filed on March 31, 2004, was a necessary and direct response to an error in Box 2 of the Notice of Allowability, which incorrectly identified the allowed claims as Claims 2-19 and 18-20. This indication failed to include allowed Claims 21 and 22. The sole reason for filing the Request, therefore, was to correct an error in the Notice of Allowance.
- (14) This necessary response should therefore not be considered a failure to engage in reasonable efforts to conclude prosecution, and should not result in a 120 day Applicant-Delay period.

RELIEF REQUESTED

Wherefore, reconsideration of the Patent Term Adjustment is respectfully requested, in which the Applicant-Delay period of 122 days for responding to that request is changed to 2(122 - 120 = 2), leaving a PTA of 421 days.

CONCLUSION

Patentee's undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,

Attorney for Patentee

Scott D. Malpede

Registration No. 32,533

FITZPATRICK, CELLA, HARPER & SCINTO 30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

SDM\agm

DC_MAIN 207224v1